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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/281,813	03/31/1999	STEPHEN PALM	P17243	7668
7055	7590	02/20/2004	EXAMINER	
GREENBLUM & BERNSTEIN, P.L.C.			NGUYEN, DUNG X	
1950 ROLAND CLARKE PLACE			ART UNIT	
RESTON, VA 20191			PAPER NUMBER	
			2631	
			DATE MAILED: 02/20/2004	

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/281,813

Applicant(s)

PALM, STEPHEN

Examiner

Dung X Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 2, 4, 5, 9 and 10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2,4,5,9 and 10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 31,32&35. 6) ☐ Other: \_\_\_\_\_

*Response to Arguments*

1. Applicant's arguments filed on July 18, 2003, have been fully considered but are moot in view of new ground(s) of rejection made in view of McHale et al. et al. (US patent # 5,852,655). Claims 1, 3, 6 – 8, and 11 – 41 have been cancelled.

*Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

3. **Claims 2, 4, 5, 9, and 10 are rejected** under 35 U.S.C. 103(a) as being unpatentable over McHale et al. (US patent # 5,852,655), and further in view of Gatherer et al. (US patent # 6,044,107).

Regarding claim 2, McHale et al. discloses that a xDSL system can be implemented (abstract), comprising:

- Central Office of 14 of figure 1 (corresponding to a negotiation data transmitter), associated with a plurality of initiating devices (column 1, line 65 to column 2, line 15), that downlinks or transmits (column 6, lines 54 – 55) at least one carrier including first negotiation information bits (for digital communication, the information should be in bits) representing different high speed communication standard capabilities to a responding communication device (column 2, lines 16 – 29 and column 10, lines 52 – 66);

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- Modem 30 in subscriber 12s of figure 1 (corresponding to a negotiation receiver) associated with a plurality of initiating devices (column 2, lines 30 – 41), that receives (column 4, line 42) at least one carrier including information bits (for digital communication, the information should be in bits) representing different high speed communication standard capabilities of the responding communication device (column 2, lines 38 – 41 and column 9, line 66 to column 10, line 9); and
- Controller 80 of figures 2 & 3 (corresponding to a selector) for selecting an appropriate communication device from the plurality of initiating communication devices, in accordance with the responding communication device, to establish a communication channel (column 8, lines 6 – 37), the communication standard capabilities indentifying different xDSL standards (abstract), and of course, the transmitting and receiving negotiations must be occurred before establishing the communication link.

McHale et al. differs from the instant claimed invention that it does not state in controller 80 of figure 2 & 3 (corresponding to a selector), wherein the transmitted at least one carrier contains data related to a useable carrier allocation. However, Gatherer et al. teaches that the transmitted data comprising useable allocation information (column 14, lines 61 – 67 of Gatherer et al.). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to implement Gatherer et al. into McHale et al. to provide that wherein the transmitted at least one carrier contains data related to a useable carrier allocation information for improving the communication system.

Regarding claims 4, the limitations are analyzed in the same manner set forth as claim 2.

Regarding claim 5, McHale et al. differs from the instant claimed invention that it does not show that wherein transmission characteristics of the transmitted at least one carrier is re-configurable during a transmission operation in order to minimize interference with the neighboring receiving system. However, Gatherer et al. further discloses that wherein transmission characteristics of the transmitted at least one carrier is re-configurable during a transmission operation in order to minimize interference with the neighboring receiving systems (column 12, line 66 to column 13, line 22). Therefore, it would have been obvious to one of ordinary skill in

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the art at the time of the invention was made to implement Gatherer et al. into McHale et al. to provide that wherein transmission characteristics of the transmitted at least one carrier is re-configurable during a transmission operation in order to minimize interference with the neighboring receiving system for improving the communication system.

Regarding claims 9, the limitations are analyzed in the same manner set forth as claim 2.

Regarding claims 10, the limitations are analyzed in the same manner set forth as claim 5.

***Contact Information***

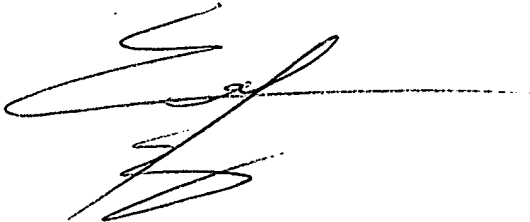
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dung X. Nguyen whose telephone number is (703) 305-4892. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Ghayour Mohammad H can be reached on (703) 306-3034. The fax number for this group is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305- 3800.

DXN

February 10, 2004

A handwritten signature in black ink, appearing to be 'DXN' or similar, with a horizontal line extending to the right.